

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
CONSUMERS ENERGY COMPANY)	Case No. U-18194
for approval of long-term power purchase contracts.)	
_____)	

At the January 12, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER APPROVING SETTLEMENT AGREEMENT

Procedural History

On October 31, 2016, Consumers Energy Company (Consumers) filed an application requesting approval of long-term power purchase contracts. These contracts were the result of an October 20, 2016 reverse auction that was conducted pursuant to the procedures used in the company's September 2014 reverse auction, which resulted in power purchase contracts approved in Case No. U-17725. In conjunction with Consumers' application, the company also filed direct testimony and exhibits of David F. Ronk, Jr.

A prehearing conference was held on November 28, 2016, before Administrative Law Judge Martin D. Snider (ALJ). Consumers and the Commission Staff (Staff) participated in the case. The ALJ informed the parties that the Commission would read the record, and set a schedule that would allow for a final order to be issued before February 7, 2017.

An evidentiary hearing was held on December 21, 2016, and the parties agreed to bind into the record the direct testimony and exhibits of Mr. Ronk without cross-examination. Additionally, the Staff offered into evidence three exhibits, which consisted of Consumers' responses to the Staff's discovery requests in this proceeding. The record consists of 28 pages of transcript and 10 exhibits.

Summary Background

In August 2016, Consumers determined that it would have insufficient planning resources¹ to meet its reserve margin requirements for Midcontinent Independent System Operator, Inc. (MISO) planning year² 2017. The company determined, based upon projected demand, MISO planning reserve requirements, and available resources, that it was approximately 250 Zonal Resource Credits (ZRCs)³ short of meeting its planning reserve margin requirement for planning year 2017.

In June 2016, MISO published the 2016 Organization of MISO States (OMS)⁴ Survey Results. Those results projected an approximate 300 MW shortfall with respect to reserve requirements for the Lower Peninsula of Michigan (MISO Local Resource Zone 7 or LRZ 7). Likewise, in the July 22, 2016 order in Case No. U-17992, the Commission concluded that LRZ 7 is expected to be about 270 MW short of its reserve margin requirements. Consumers states that its own internal

¹ A planning resource is a resource that can be used to satisfy a load serving entity's reserve margin requirements.

² A MISO planning year is the 12-month period from June 1 through May 31 of the following year.

³ One ZRC of capacity is expected to be sufficient to serve one megawatt (MW) of forecasted demand, discounted for generator forced outages.

⁴ The OMS is a non-profit organization representing the retail electric utility regulators of the various states with jurisdictions being served by MISO.

estimate of the capacity position for LRZ 7 for planning year 2017 prior to August 2016 is consistent with the conclusions of MISO and the Commission. Consumers further states that it reached these conclusions before it realized that the company would also be short for planning year 2017. Moreover, DTE Electric Company's St. Clair 1,547 MW coal-fueled plant was damaged by a large fire on August 11, 2016, and the loss of that capacity is not reflected in the anticipated shortfall. Because there appears to be widespread consensus about a capacity shortfall in LRZ 7,⁵ Consumers states that it acted reasonably to purchase the required available capacity before such capacity was purchased by other load serving entities. Absent this purchase, Consumers would have had to purchase such capacity through MISO's Planning Resource Auction.

On September 21, 2016, Consumers issued a Request for Proposals (RFP) through EnerNOC, Inc. (EnerNOC) for the acquisition of up to 300 ZRCs for MISO planning year 2017. Notice of the RFP was sent to approximately 50 entities, and an article about the RFP was published in Platts Megawatt Daily on September 23, 2016. Consumers' affiliates were allowed to participate in the competitive capacity solicitation in order to broaden the pool of available resources and to increase the level of market competition in the capacity solicitation.⁶ Exhibit A-3, sponsored by Mr. Ronk, is a copy of the RFP issued. Seven entities responded with a notice of intent to participate, and four entities participated in the auction.

⁵ The Commission is mindful that there could be additional power purchase agreements as a result of the company's early termination of the power purchase agreement with Entergy Nuclear Palisades, LLC. *See*, December 20, 2016 order in Case No. U-18218 *et al.*

⁶ Consumers filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket Nos. ER98-4421 and ER96-2350 requesting authorization under Section 205 of the Federal Power Act to purchase capacity from a market regulated power sales affiliate (commonly referred to as an affiliate waiver). That FERC case was docketed as FERC Docket No. ER17-42. Once received, a copy of the FERC order in Docket No. ER17-42 will be filed in this docket.

EnerNOC conducted a reverse blind capacity auction on October 20, 2016. The procedures used for the reverse auction, and the nature of the power purchase contracts that resulted from that reverse auction, are analogous to the reverse auction and power purchase contracts considered and approved in the January 27, 2015 order in Case No. U-17725. The volumes and associated prices for each of the successful bidders appear on page 2 of Exhibit A-5. Based on the bid volumes and prices and Consumers' demand response activities, the company contracted for 180 ZRCs. Consumers states that its affiliate, CMS Energy Resource Management Company (CMS ERM), was selected as one of the winning bidders in the reverse auction. The contract documents between Consumers and the selected winning bidders are provided in Exhibit A-7.

Settlement Agreement

According to the terms of the settlement agreement, attached as Exhibit A, the parties agree that in advance of available capacity being purchased by other load serving entities, Consumers acted reasonably for the benefit of its customers to purchase the required capacity. By EnerNOC conducting a reverse capacity auction using the procedure described in Case Nos. U-17496 and U-17725, the parties agree that Consumers' capacity purchase arrangements, set forth in Exhibit A-7, are reasonable and prudent. The parties also agree that the company reasonably executed these capacity contracts in advance of Commission approval in order to assure continued availability of capacity. Therefore, the parties agree that the contracts are reasonable and prudent, and that the Commission should approve these contracts pursuant to Section 6j(13)(b) of Public Act 304 of 1982 (Act 304), MCL 460.6j(13)(b).

The settlement agreement also provides that in addition to the 40 MW of incremental demand response capacity planned for the 2017 planning year, Consumers plans to acquire an additional 10 MW of demand response capacity.

Finally, pursuant to the settlement agreement, the parties recognize that CMS ERM, an affiliate of Consumers, was selected as one of the winning bidders in the blind reverse auction. The parties agree that Consumers' agreement to purchase capacity from the company's affiliate was made pursuant to a fully market-based blind auction conducted by an independent third party. The parties agree that the contractual agreement between Consumers and its affiliate was the result of an arms-length transaction based on auction results, and the company was not aware of the identity of its affiliate when making the purchase decision. The parties agree that there was no preferential treatment afforded to Consumers' affiliate, that customers benefit from the participation of the company's affiliate in the auction, and that there is no Code of Conduct⁷ violation in this case. The parties further agree that approving Consumers' contract with CMS ERM is consistent with the Commission's similar approvals granted in the January 27, 2015 order in Case No. U-17725.

The Commission has reviewed the settlement agreement and finds that the settlement agreement is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that:

- A. The settlement agreement, attached as Exhibit A, is approved.
- B. The contracts set forth in Exhibit A-7 to Consumers Energy Company's October 31, 2016 application are reasonable and prudent, and are approved as in compliance with MCL 460.6j(13)(b).

⁷ The Commission established a Code of Conduct for all electric utilities regulated by the Commission and for all alternative electric suppliers on October 21, 2001, in Case No. U-12134.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscdockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of January 12, 2017.

Kavita Kale, Executive Secretary

STATE OF MICHIGAN
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In the matter of the application of)
CONSUMERS ENERGY COMPANY)
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Case No. U-18194

SETTLEMENT AGREEMENT

Pursuant to MCL 24.278 and Rule 431 of the Rules of Practice and Procedure before the Michigan Public Service Commission (“MPSC” or the “Commission”), the undersigned parties agree as follows:

1. On October 31, 2016, Consumers Energy Company (“Consumers Energy” or the “Company”) filed an Application requesting approval of power purchase contracts which resulted from an October 20, 2016 reverse auction which was conducted pursuant to the procedures also used in a September 2014 reverse auction which resulted in power purchase contracts which were approved in Case No. U-17725.

2. The initial prehearing conference in this proceeding was held on November 28, 2016 before Administrative Law Judge (“ALJ”) Martin Snider. The parties to the case are Consumers Energy and the MPSC Staff (“Staff”).

3. In conjunction with Consumers Energy’s Application the Company also filed direct testimony and exhibits of David F. Ronk, Jr. At an evidentiary hearing held on December 21, 2016, the parties agreed to bind into the record the direct testimony and exhibits of Mr. Ronk without cross-examination. Staff offered into evidence three exhibits consisting of Consumers Energy’s responses to Staff’s discovery requests in this proceeding.

4. According to the Company's Application, as supported by the testimony of Mr. Ronk, in August 2016 Consumers Energy determined that it would have insufficient Planning Resources¹ to meet its reserve margin requirements for Midcontinent Independent System Operator ("MISO") Planning Year² 2017. The Company determined, based upon projected demand, MISO planning reserve requirements, and available resources, that it was approximately 250 Zonal Resource Credits ("ZRCs")³ short of meeting its Planning Reserve Margin Requirement for Planning Year 2017.

5. In June 2016, MISO published the 2016 Organization of MISO States ("OMS")⁴ Survey Results. Those results projected an approximate 300 MW shortfall with respect to reserve requirements for the Lower Peninsula of Michigan (MISO Local Resource Zone 7 or "LRZ 7"). Likewise, the Commission in its July 22, 2016 Order in Case No. U-17992 concluded that LRZ 7 is expected to be about 270 MW short of its reserve margin requirements. Consumers Energy states that its own internal estimate of the capacity position for LRZ 7 for Planning Year 2017 prior to August 2016 is consistent with the conclusions of MISO and the Commission. The Company further states that its conclusions were all reached before the Company realized that it also would be short for Planning Year 2017. Moreover, DTE Electric Company's St. Clair 1,547 MW coal-fueled plant was damaged by a large fire on August 11, 2016 and the loss of any of that capacity is not reflected in the anticipated shortfall. Since there appears to be widespread consensus of the existence of a capacity shortfall in LRZ 7, the parties agree that Consumers Energy acted reasonably in proceeding to act quickly for the benefit of its

¹ A Planning Resource is a resource that can be used to satisfy a load serving entity's reserve margin requirements.

² A MISO Planning Year is the twelve-month period from June 1 through May 31 of the following year.

³ One ZRC of capacity is expected to be sufficient to serve one MW of forecasted demand, discounted for generator forced outages.

⁴ The OMS is a stakeholder group representing the regulators of the various States with jurisdictions being served by MISO.

customers to purchase required available capacity before such capacity is purchased by other load serving entities. The parties agree that if the Company was unable to obtain the capacity needed to eliminate its projected shortfall through the competitive solicitation, it would have needed to purchase such capacity through MISO's Planning Resource Auction ("PRA"). The Company anticipates that the PRA clearing price for Planning Year 2017 will be substantially higher than in past years, and the Company used this solicitation to obtain capacity at prices lower than what it anticipates to result from the MISO PRA.

6. On September 21, 2016, Consumers Energy issued a Request for Proposals ("RFP") through EnerNOC, Inc. ("EnerNOC") (successor in interest to World Energy Solutions) for the acquisition of up to 300 ZRCs for Planning Year 2017. Notice of the RFP was sent to approximately 50 entities, and an article on the RFP was published in Platts Megawatt Daily on September 23, 2016. Consumers Energy allowed its affiliates to participate in the competitive capacity solicitation in order to broaden the pool of available resources and to increase the level of market competition in the capacity solicitation. Exhibit A-3 (DFR-3) in this proceeding is a copy of the RFP issued. Seven entities responded with a notice of intent to participate, and four entities participated in the auction.

7. On October 20, 2016, EnerNOC conducted a reverse capacity auction in accordance with the RFP using the procedures described in Case Nos. U-17496 and U-17725. The procedures used for the October 20, 2016 reverse auction and the nature of the power purchase contracts which resulted from that reverse auction, are analogous to the reverse auction and power purchase contracts which were considered and approved in Case No. U-17725. See Case No. U-17725, Order dated January 27, 2015. The framework presented in Case Nos. U-17725 and U-18194 has been utilized and reviewed only in the context of relatively modest

incremental quantities of ZRCs for the purpose of satisfying requirements for the coming MISO planning year.

8. The identity of the bidders that provided Notices of Intent to participate in the October 20, 2016 auction is shown on Exhibit A-4 (DFR-4). EnerNOC's anonymous listing⁵ of the best offers received in quantities up to, but not exceeding, the target ZRC volume is set forth on Exhibit A-5 (DFR-5). Based on the bid volumes and prices, and the demand response activities described in Paragraph 9 below, the Company selected the bids shown on page 2 of Exhibit A-5 (DFR-5), for a total of 180 ZRCs.

9. In making its decision to proceed with the October 20, 2016 reverse auction, and to contract for 180 ZRCs resulting from the auction, Consumers Energy determined that, in addition to the 40 ZRCs of demand response capacity which the Company had previously planned to acquire for the 2017 MISO Planning Year, the Company would also plan to acquire an additional 10 ZRCs of demand response capacity. As a result, the Company assumes such capacity can be obtained and is working to procure it in time for the 2017 MISO PRA. The remainder of the Company's capacity needs for the 2017 Planning Year will be the capacity obtained from the October 20, 2016 reverse auction, if the Commission approves the relief requested in this Application. Additional details regarding the Company's demand response program are described in Staff's Exhibit S-3 in this proceeding.

10. The contract documents between Consumers Energy and the selected bidders for which the Company is seeking approval are set forth in Exhibit A-7 (DFR-7). Based upon the wide circulation given the RFP, the number of parties that participated in the RFP, the parties' knowledge of the marketplace, and the terms of the contract documents, the parties agree that the

⁵ At the time this listing was presented to the Company, all bidders were anonymous. To facilitate the discussion in Paragraph 8 herein the offers made by the Company's affiliate are explicitly shown.

capacity purchase arrangements set forth in Exhibit A-7 (DFR-7) constitute reasonable and prudent capacity purchase arrangements.

11. Because the Company desired that the auction be open to all interested parties, including both affiliates and non-affiliates, it also filed an Application with the Federal Energy Regulatory Commission (“FERC”) in FERC Docket Nos. ER98-4421 and ER96-2350 in which the Company requested authorization under Section 205 of the Federal Power Act to purchase capacity from a market regulated power sales affiliate (commonly referred to as an “affiliate waiver”). That FERC case was docketed as FERC Docket No. ER17-42. An order granting the requested relief from FERC is pending and is expected in sufficient time for use of the purchased capacity in the MISO PRA for Planning Year 2017. As shown in Exhibits A-5 (DFR-5) and A-7 (DFR-7) in this proceeding, Consumers Energy’s affiliate, CMS Energy Resource Management Company (“CMS ERM”), was selected as one of the most economical bidders in the auction and the effectiveness of the contract with CMS ERM is conditioned upon FERC’s approval of purchases from CMS ERM. Consumers Energy agrees to file a copy of the FERC order in Docket No. ER17-42 in this MPSC docket.

12. Exhibit A-6 (DFR-6) sets forth a detailed calculation of the Company’s fully allocated embedded cost and compares that cost, plus 10%, to the CMS ERM bids selected by the Company. As shown in Exhibit A-6 (DFR-6), the CMS ERM bid prices were lower than the Company’s fully allocated embedded cost plus 10%. In light of these facts, the parties agree that, in accordance with the Commission’s January 27, 2015 Order in Case No. U-17725, the market price of the CMS ERM bids should be used to determine the approved contract prices. The parties agree that Consumers Energy’s agreement to purchase capacity from the Company’s affiliate was made pursuant to a fully market-based blind auction conducted by an independent

third party. The contractual agreement between the Company and its affiliate resulted from an arms-length transaction in which the Company was not aware of the identity of its affiliate when making the purchase decision based on the auction results. The parties agree that there was no preferential treatment afforded to the Company's affiliate. The parties agree that customers benefited from the participation of the Company's affiliate in the auction, and the potential harm which the Commission's Case No. U-12134 Code of Conduct was intended to prevent is not present in this case. The parties agree that approving the Company's contract with CMS ERM which resulted from the October 20, 2016 reverse auction would be consistent with the Commission's similar approvals granted in the January 27, 2015 Order in Case No. U-17725.

13. With the exception of CMS ERM, the auction results and contract documents set forth in Exhibits A-5 (DFR-5) and A-7 (DFR-7) are redacted as to the names of the sellers, and with regard to Exhibit A-7 (DFR-7), to the extent that individual pricing terms can identify the sellers, the individual pricing terms have also been redacted. The names of the sellers and the executed contracts were provided to the MPSC Staff for confidential review which was designed to maintain the confidential nature of the information. Consumers Energy believes that public disclosure of this type of proprietary business information would impair its ability to conduct successful capacity solicitations in a highly competitive wholesale power market and to negotiate the most attractive power supply arrangements. Consumers Energy is willing to provide the referenced confidential information for the Commission's review, but requests that this information be afforded confidential treatment and kept under seal. The dollar amounts and associated ZRCs contracted are provided in Exhibit A-5 (DFR-5), but the identity of the supplier associated with each respective bid is not publicly disclosed.

14. Consumers Energy determined it was necessary to execute these contracts in advance of Commission approval in order to assure continued availability of the capacity. Because the terms of the proposed power supply contracts are for periods in excess of six months, Consumers Energy has requested Commission approval pursuant to Section 6j(13)(b) of 1982 Public Act 304 (“Act 304”), MCL 460.6j(13)(b). The parties agree that the contracts at issue are reasonable and prudent, and that the requested Act 304 approval should be granted.

15. The contracts at issue in this proceeding are dependent upon MPSC approval of their terms. The contracts provide that they will be void *ab initio* unless the MPSC approves their terms at least 21 business days before the MISO Fixed Resource Adequacy Plan (“FRAP”) deadline for the respective MISO Planning Year. The MISO FRAP deadline is the seventh business day of March for the upcoming MISO Planning Year. In 2017, that date is March 9, 2017. In light of the contractual requirement to obtain MPSC approval at least 21 business days before the MISO FRAP deadline, the parties request the Commission to approve the terms of the contracts for Planning Year 2017 no later than February 7, 2017.

16. This Settlement Agreement is entered into for the sole and express purpose of reaching a compromise among the parties. All offers of settlement and discussions relating to this Settlement Agreement are, and shall be considered, privileged under MRE 408. If the Commission approves this Settlement Agreement without modification, neither the parties to this Settlement Agreement nor the Commission shall make any reference to, or use, this Settlement Agreement or the order approving it, as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided,

however, such references may be made to enforce or implement the provisions of this Settlement Agreement and the order approving it.

17. This Settlement Agreement is based on the facts, circumstances, and record of this case and is intended for the final disposition of Case No. U-18194. So long as the Commission approves this Settlement Agreement without any modification, the parties agree not to appeal, challenge, or otherwise contest the Commission order approving this Settlement Agreement. The parties agree and understand that this Settlement Agreement does not limit any party's right to take new and/or different positions on similar issues in other administrative proceedings, or appeals related thereto.


18. This Settlement Agreement is not severable. Each provision of the Settlement Agreement is dependent upon all other provisions of this Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of the Settlement Agreement, this Settlement Agreement shall be deemed to be withdrawn, shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall be without prejudice to the pre-negotiation positions of the parties.

19. The parties agree that approval of this Settlement Agreement by the Commission would be reasonable and in the public interest.

20. The parties agree to waive Section 81 of the Administrative Procedures Act of 1969, MCL 24.281, as it applies to the issues resolved in this Settlement Agreement, if the Commission approves this Settlement Agreement without modification.


WHEREFORE, the undersigned parties respectfully request the Michigan Public Service Commission to approve this Settlement Agreement on an expeditious basis and to make it effective in accordance with its terms by final order.

CONSUMERS ENERGY COMPANY

By:  Digitally signed by
Kelly M. Hall
Date: 2016.12.21
13:10:16 -05'00' Date: December 21, 2016

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**MICHIGAN PUBLIC SERVICE
COMMISSION STAFF**

By:  Date: December 21, 2016

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